IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 29TH OCTOBER 2007 / 7TH KARTHIKA 1929

WP(C).No. 32098 of 2007(U)

AGAINST THE ORDER DATED 12/09/2007 IN IA.3978/2007 IN OS.424/2004 of ADDL.M.C.,KOZHIKODE-II

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PETITIONERS/PETITIONERS 1-3 & 5/PLAINTIFFS 1-3 & 5:

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1. EDOLI NAFEESA, 57 YEARS,
   W/O.VALAPPIL KOLLIKUNI KUTTU HAJI,
   B.K.HOUSE, VELOOR AMSOM DESOM, KOYILANDY TALUK.

2. SUBAIR, 36 YEARS, S/O.VALAPPIL
   KOLLIKUNI KUTTU HAJI,
   B.K.HOUSE, VELOOR AMSOM DESOM, KOYILANDY TALUK.

3. SHAKEELA, AGED 34 YEARS,
   D/O.VALAPPIL KOLLIKUNI KUTTU HAJI,
   B.K.HOUSE, VELOOR AMSOM DESOM, KOYILANDY TALUK.

4. JUMAILA, AGED 25 YEARS,
   D/O.VALAPPIL KOLLIKUNI KUTTU HAJI,
   B.K.HOUSE, VELOOR AMSOM DESOM, KOYILANDY TALUK.

BY ADV. SRI.K.M.FIROZ
SMT.M.SHAJNA

RESPONDENTS/RESPONDENTS AND PETITIONER NO.4/ DEFENDANTS/P4:

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1. PATHUMMA, 72 YEARS,
   W/O.VALAPPIL KOLLIKUNIKOYA MOIDEEN HAJI,
   'KAVIDICHAYIL', VELOOR AMSOM DESOM,
   KOYILANDY TALUK, KOYILANDY.P.O.

2. MOIDEENKOYA, 50 YEARS,
   S/O.VALAPPIL KOLLIKUNIKOYA MOIDEEN HAJI,
   'KAVIDICHAYIL', VELOOR AMSOM DESOM,
   KOYILANDY TALUK, KOYILANDY.P.O.

3. KUNHEEBI, 56 YEARS,
D/O.VALAPPIL KOLLIKUNIKOYA MOIDEEN HAJI,
'KAVIDICHAYIL', VELOOR AMSOM DESOM,
KOYILANDY TALUK, KOYILANDY.P.O.

4. NAFEESA, 56 YEARS,
D/O.VALAPPIL KOLLIKUNIKOYA MOIDEEN HAJI,
'KAVIDICHAYIL', VELOOR AMSOM DESOM,
KOYILANDY TALUK, KOYILANDY.P.O.

5. HAMEED, 42 YEARS,
S/O.VALAPPIL KOLLIKUNIKOYA MOIDEEN HAJI,
'KAVIDICHAYIL', VELOOR AMSOM DESOM,
KOYILANDY TALUK, KOYILANDY.P.O.

6. RASEENA, 47 YEARS,
D/O.VALAPPIL KOLLIKUNIKOYA MOIDEEN HAJI,
'KAVIDICHAYIL', VELOOR AMSOM DESOM, KOYILANDY TALUK

7. PUTHIYOTTIL KUNJEEBI, 62 YEARS,
W/O.VALAPPIL KOLLIKUNIKOYA MOIDEEN HAJI,
'KAVIDICHAYIL', VELOOR AMSOM DESOM, KOYILANDY TALUK

8. JAMEELA, 44 YEARS,
D/O.PUTHIYOTTIL KUNHEEBI,
'KAVIDICHAYIL', VELOOR AMSOM DESOM,
KOYILANDY TALUK.

9. THASRIYA AGED 31 YEARS,
D/O.VALAPPIL KOLLIKUNI KUTTU HAJI,
B.K.HOUSE, VELOOR AMSOM DESOM
KOYILANDY TALUK, KOYILANDY.P.O.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JP

M.N.KRISHNAN, J

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W.P.(C) No.32098 OF 2007

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Dated this the 29th day of October 2007

JUDGMENT

This writ petition is filed challenging Ext.P5 order rendered in I.A.No.3978 of 2007 in O.S.No.424 of 2004 of the IIIrd Addl.Sub Court, Kozhikode. The said I.A. is filed for reception of documents. At the outset, I may like to point out that the court below should not have considered some other point in an application where the specific prayer is only for reception of documents. Similarly, it was not necessary to make observations regarding the maintainability, limitation, etc. in an application for restitution of documents. This observation will only lead to the loss of confidence of the party against whom it is made. They may be matters which require detailed hearing to arrive at a decision.

2.Therefore, I dispose of the writ petition as follows: (1)The learned Sub Judge is directed to receive the documents produced along with I.A.No.3978 of 2007 on payment of cost of Rs.1,000/- as ordered for which I grant two weeks' further time for making the remittance. (2) The court shall not decide a preliminary point on maintainability without hearing both

sides on the question whether it can be heard as a preliminary issue under Order 14 Rule 2(2) of the Code of Civil Procedure.(3) The court shall not be guided by any of the observations made by itself in the order which is challenged for the purpose of decision on any other point in this case. (4) The matter shall not be proceeded with until a decision is taken after hearing both sides on maintainability issue.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-